IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10087 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAKBHAI VASHRAMBHAI MANGE

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI with
MR MR PRAJAPATI for Petitioner No. 1
MRS HANSA PUNANI AGP for Respondents No. 1-3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/12/2001

ORAL JUDGEMENT

1. By way of this petition, the petitioner has challenged the order of detention dtd.29/9/2001 passed by the District Magistrate, Jamnagar under the powers conferred to him under Sec.3(2) of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act (hereinafter referred to as "the Act").

2. The learned counsel for the petitioner has

submitted this Court has released the co-detenu while passing order in Special Civil Application NO.9367 of 2001 dtd.6/12/2001. He has further submitted that the petitioner has made a detailed representation through advocate against the detention order on 24/10/2001 and thereby the petitioner demanded certain vital documents relying on which the detaining authority has passed the detention order. The petitioner by the said representation also demanded Gujarati translation of some of the documents which has been provided to the detenu in English. The said representation has been duly received by the concerned authorities but the documents demanded, has not been supplied to the detenu and the petitioner was communicated the rejection of his representation through jail vide letter dtd.8/11/2001 and therefore, there is a delay in considering the representation and communicating the same to the detenu.

3. In view of the above facts and circumstances, it is established from the record that there is a days in deciding the representation and communicating the same to the detenu which remains unexplained and the same is unconstitutional. In support of his say, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the representation of the petitioner has not been decided and not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 29/9/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Dipakbhai Vasarambhai Mange is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik